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The Historical Perspective of the Relations Between the Constitutional Court and the Supreme Court

ABSTRACT

This article is about the problem of the jurisdictional dispute between the Constitutional Court and the Supreme Court. It shows the origin of the historical perspective of the dispute, analyzing the mutual relations between both judicial authorities since the moment when the Constitutional Court was created and its course after the Constitution of 1997 came into force. Possible solutions to the conflict between the two entities of highest judicial authority on a normative level were mentioned, in particular through an amendment to the Constitution.

KEYWORDS

Constitutional Court, Supreme Court, interpretation rulings, Constitution

Introduction

The Constitutional Court (hereinafter: CC) and the Supreme Court (hereinafter: SC) are the two judicial authorities whose judicature is of particular importance for the application of law by courts and that is why the relations between those entities are so significant. The need to protect the citizens' trust in the rights has been repeatedly pointed out by the CC which indicated that "the whole social order, mutual coexistence of people, are unthinkable without taking into account the category of trust as a psychological and sociological element. It also relates to the field of law, if its rational nature is assumed. Confidence in law allows a citizen to plan and anticipate in the long term."¹ In its judicature the Supreme Court notes that the "uniformity

¹ The ruling of the Constitutional Courts of 2nd March, 1993, ref. no. (K. 9/92).

of judicial decisions undoubtedly exposes the legal certainty of law enforcement,"² because it should be remembered that the juridical aspects of the uniformity of court decisions are as important as the social ones, namely the uniformity of decisions in the public perception is an important value, because it is unthinkable for the citizens to accept that different decisions are passed on the basis of the same provisions of law.³

Looking at the mutual relations between the CC and the SC, one cannot miss the conflict between these judicial authorities which has existed since the beginning of the establishment of a separate body responsible for the constitutionality of the law. A prime example of mutual antagonisms is the Constitutional Court's judgment of 27 October 2010 in which it condemned the resolution of seven judges of the Supreme Court dated 20 December 2007, ref. no. (I KZP 37/07)⁴ and the resolution of seven judges of the Supreme Court dated 17 December 2009 which was given the power of the legal principle of interpretation concerning the judgments of the Constitutional Court.⁵ However, due to the time frame set by the Editorial Board the analysis regards the relations between the Constitutional Court and the Supreme Court before the Constitution of the Republic of Poland came into force.⁶

Looking at the relations between the CC and the Supreme Court, a question arises of the origin of the dispute, its course and the possibilities for further cooperation between the two judicial authorities. An answer should be also found to the question of whether it is a dispute about who should bear the palm or a fundamental dispute over the application of law.

Difficult beginnings of the coexistence of the Constitutional Court and the Supreme Court

When referring to history, it should be noted that the Supreme Court as a judicial authority which was set up on 18 July 1917 by the Provisional

² Resolution of seven judges of the Supreme Court dated 5th May, 1992, ref. no. (Kw. Pr. 5/92).

³ L. Leszczyński, *Jednolitość orzecznictwa jako wartość stosowania prawa [w:] Jednolitość orzecznictwa. Standard – instrumenty – praktyka. Materiały z konferencji naukowej Warszawa*, red. M. Grochowski, M. Raczkowski, S. Żółtek, Warszawa 2015, p. 13.

⁴ Constitutional Court's judgment of 27 October 2010, ref. no. K 10/08.

⁵ Resolution of seven judges of the Supreme Court dated 17 December, 2009, ref. no. III PZP 2/09.

⁶ The Constitution of the Republic of Poland of 2nd April, 1997 (O.J.L. 1997 No. 78, item. 483).

Council of the State of the Kingdom of Poland, whereas the Constitutional Court was established by the Act of 26 March 1982 on Amending the Constitution of the Polish People's Republic⁷ and in reality the CC actually operated since 1 January 1986. In the context of this subject, one should first outline the evolution of the political position of the Supreme Court over the decades. Moreover, what seems interesting is the Supreme Court's judges' opinion on the necessity to establish a new body which is the CC as well as the beginning of its functioning until the Constitution of the Republic of Poland came into force in 1997.

In the interwar period, in the absence of a body such as the CC, the Supreme Court found some unconstitutional acts which were refused binding force by the highest judicial authority and some unconstitutional acts which were considered to be still in force.⁸ According to Art. 51, paragraph. 1 of the Constitution of the Polish People's Republic,⁹ the Supreme Court was the main judicial authority and it supervised the activities of all other courts regarding judgments. On the other hand, under the Act on the Supreme Court of 1962,¹⁰ this court is the supreme body in the system of the entire Polish judiciary system which governed the Social Insurance Court, and the Military Chamber of the Supreme Court took over the powers of the Supreme Military Court.¹¹ The Act on the Supreme Court adopted in 1984¹² stipulated that this authority is the supreme judicial body of the Polish People's Republic which supervises the activities of other courts regarding judgments. Even this short description clearly indicates the privileged position of the Supreme Court in the system of judicial power and it is no wonder that over the years the Supreme Court got used to the fact that *Roma locuta, causa finita*.

Under the ruling of March Constitution¹³ and April Constitution¹⁴ there was no authority responsible for the judicial supervision of the constitutionality of the law, whereas during the Polish People's Republic a negative

⁷ O.J.L. of 1982, no. 11, item 83.

⁸ M. Zbrojewska, *Rola i stanowisko prawne Sądu Najwyższego w procesie karnym*, Warszawa 2013, pp. 15–16.

⁹ The Constitution of the Polish People's Republic adopted by the Legislative Sejm on 22nd July, 1952 (O.J.L. 1952, no. 33, item 232).

¹⁰ The Act of 15th February, 1962 on the Supreme Court (O.J.L. 1962, no. 11 item 54).

¹¹ S. Włodyka, *Funkcje Sądu Najwyższego*, Kraków 1965, p. 25.

¹² The Act of 20th September, 1984 on the Supreme Court (O.J.L. 1984, no. 45, item 241).

¹³ The Act of 17th March, 1921 – The Constitution of the Republic of Poland (O.J.L., 1921, no. 44, item 267).

¹⁴ The constitutional law of 23rd April, 1935 (O.J.L. 1935, no. 30, item 227).

attitude to judicial supervision dominated due to the fact that the model of constitutional supervision assumed that the value of legal norms depended on its relation to the accepted norm of higher order. This solution led to eliminating unconstitutional legal acts from the legal system.¹⁵ The demands for the establishment of a constitutional judiciary in the Polish legal system were brought up by the representatives of the doctrine already in the 1970s, however, it was not until the breakthrough of 1980 that it was possible for the proposals to establish a body empowered to control the constitutionality of the law to take real shape.¹⁶

By choosing a model of control of the constitutionality of the law in Poland, a system of control could be adopted from the English model, where the supervision is conducted by the common courts; in one variation of this model there is a separate SC control chamber of the constitutionality of the law. In the USA, within 8 years of the introduction of the Constitution,¹⁷ the Supreme Court was granted the power to control the constitutionality of the federal Constitutions,¹⁸ treaties and federal laws. The other model assumes an organizationally and functionally separate body whose main objective is to control the constitutionality of the law.¹⁹

The idea of establishing a separate body responsible for the control of the constitutionality of the law was firmly opposed by the First President of the Supreme Court – Włodzimierz Berutowicz. He used his influence in the Politburo of the Communist Party to entrust the Chamber of the Supreme Court with the control of the constitutionality of the law.²⁰ The skepticism about the need for the functioning of the CC as a separate body of the judiciary system was also expressed by the First President of the Supreme Court – Adam Strzembosz who argued primarily that some of the judges of the Constitutional Court²¹ were appointed by the previous power.

Prof. Andrzej Zoll rightly notes that the formation of the CC was a failure of the concept according to which the Supreme Court's reputation was to be boosted by entrusting it with the tasks in the area of monitoring legisla-

¹⁵ S. M. Przyjemski, *Spory kompetencyjne między organami sprawującymi wymiar sprawiedliwości w Polsce*, Warszawa 2009, p. 44.

¹⁶ L. Garlicki, *Prawo konstytucyjne – zarys wykładu*, Warszawa 2006, p. 361.

¹⁷ R. Hauser, J. Trzeciński, *Prawotwórcze znaczenie orzeczeń Trybunału Konstytucyjnego w orzecznictwie Naczelnego Sądu Administracyjnego*, Warszawa 2010, p. 15.

¹⁸ B. Banaszak, *Prawo konstytucyjne*, Warszawa 2008, p. 107.

¹⁹ R. Hauser, J. Trzeciński, op. cit., p. 16.

²⁰ A. Zoll, *Trybunał Konstytucyjny i Sąd Najwyższy*, [in:] *Trybunał Konstytucyjny – Księga XV-lecia*, red. F. Saddler, A. Jankiewicz, Warsaw 2001, p. 93.

²¹ Idem, *Zollowie – opowieść rodzinna*, Kraków 2011, p. 400.

tion.²² It seems that the system of omnipotence of the Supreme Court, which existed from the beginning of its creation in 1917 until the CC started to operate in the legal system, was supposed to be maintained.

At the moment of creation of the CC as an organ independent from the Supreme Court W. Berutowicz saw the need to develop the mutual relations between the two judicial authorities in such a way as to maintain the compliance with the Constitution and internal consistency of the entire legal system. As history would show, the development of mutual relations is a long-term process full of numerous disputes between the CC and the SC.²³

The first fundamental dispute between the Constitutional Court and the Supreme Court occurred already in 1995 on the matter concerning the possibility of pursuing by the officers of uniformed services claims for payment of interest for delays in payment of salaries. In its resolution of 25 January 1995²⁴ the Constitutional Court, presiding in its full composition, ruled that the failure to pay salaries to the uniformed officer is a delay in the fulfillment of monetary performances, justifying, pursuant to Art. 481 § 1 of the Civil Code, the claim for interest before the common court. However, four months later the Supreme Court in the resolution adopted by seven judges²⁵ ruled that the court procedure to pursue the claim by the police officer before a common court together with interest is inadmissible. It should be noted that the right of the CC in the scope of the universally binding statutory interpretation encroaches on the Supreme Court competences since the competence of the CC corresponded to the institution of the Supreme Court explaining questionable legal provisions or those whose use caused discrepancies in court judicature, so the powers of the Constitutional Court and the Supreme Court crossed in this area, so did also the entities which may have initiated the proceedings before the Constitutional Court and the Supreme Court.²⁶

As Professor Andrzej Stelmachowski rightly pointed out, the position taken by the Supreme Court in the resolution referred to above did not result from not knowing the CC's judgment but from the frontal polemic with it in terms of binding the Supreme Court and courts of general jurisdiction as interpreted by the Constitutional Court. On the basis of this dispute Pro-

²² Idem, *Trybunał Konstytucyjny...*, op. cit., p. 93.

²³ W. Berutowicz, *Sąd Najwyższy w Polsce Ludowej*, „Nowe Prawo” 1985, nr 5, p. 21.

²⁴ The resolution of the Constitutional Court dated 25th January, 1995, ref. no. W 14/94.

²⁵ The resolution of the Supreme Court dated 26th May, 1995, ref. no. Act I PZP 13/95.

²⁶ B. Szmulik, *Pozycja ustrojowa Sądu Najwyższego w Rzeczypospolitej Polskiej*, Warszawa 2008, pp. 212–213.

fessor Stelmachowski submitted a *de lege ferenda* postulate for the CC to comply with the standards of the rule of law and hold that the rulings on the universally binding interpretation of the law are in force from the date of their publication in the Official Journal of Laws. According to Professor Stelmachowski, this solution will reduce tensions between the Constitutional Court and the Supreme Court because it would not lead to an undermining of the Supreme Court rulings already rendered.²⁷

Another dispute of the Constitutional Court and the Supreme Court concerned the meaning of the term “the territory of the Polish State” in the so-called February Act.²⁸ In its resolution of 30 April 1996²⁹ the Constitutional Court ruled that Art. 8 paragraph 2a of the February Act refers to – taking into account the specified circumstances – “the Polish land” included in the territory of the Polish State on 1 January 1944, so also to that part of the territory of the Polish State which was located east of the so-called Curzon Line according to the borderline agreed in the Treaty of Riga of 18 March 1921. This position received a lot of academic criticism.³⁰ However, the Supreme Court ruled that the territory of the Polish State shall be construed as it is in its present borders. The then President of the CC, Professor Zoll tried to appease the conflict and suggested a meeting of the judges of the Constitutional Court with the judges of the Criminal Chamber of the Supreme Court, however, this meeting did not bring any results.³¹

There was also some misunderstanding around the competence of the President of the Constitutional Court to declare the loss of the binding power by the provision which the ruling of the Constitutional Court concerned in the absence of a reaction of the Sejm. It was indicated that the resolution of the CC did not fall within the limits of the interpretation of the Act which was an encroachment on the powers of the legislature.³²

²⁷ A. Stelmachowski, *Sąd Najwyższy kontra Trybunał Konstytucyjny*, „Przegląd Sądowy” 1996, nr 2, pp. 4, 9.

²⁸ The Act of 23rd February, 1991 on recognizing as null and void the judgments issued against persons persecuted for their activities on behalf of an independent Polish state (O.J.L. 1991, no. 34, item. 149).

²⁹ The resolution of the Constitutional Court dated 30th April, 1996, ref. no. W 18/95.

³⁰ See e.g. the critical voices: L. Paprzycki, *The Commentary to the resolution of the Constitutional Tribunal dated 30th April, 1996*, W 18/95, „Palestra” 1996, nr 9–10, p. 204; W. Czapliński, *Glosa do uchwały TK z dnia 30 kwietnia 1996 r.*, W 18/95, „Państwo i Prawo” 1996, nr 11, pp. 103–106.

³¹ A. Zoll, *Zollowie...*, op. cit., p. 401.

³² Idem, *Trybunał Konstytucyjny...*, op. cit., p. 94.

It should be noted that previous attempts at cooperating between the CC and the SC failed because of the lack of good will. That was the case when Professor Zoll was the President of the CC and he suggested a meeting of the judges of the Constitutional Court with the judges of the Criminal Chamber of the Supreme Court to try to resolve the conflicts that occurred in their mutual relations. Unfortunately this meeting failed.³³

Conclusion

When the Constitution of 1997 came into force the CC lost the right to make universally binding interpretations of the statutes and since then the rulings of the CC have been final and cannot be waived by the Sejm and so some normative causes of the conflicts between the CC and the SC went down in history. Then a question arises about the nature of the cooperation between the two judiciary entities in the present normative state. After more than two decades of mutual coexistence of the CC and the SC, have they developed a specific framework for cooperation and established a uniform judicature or there is still a dispute between the two entities which sometimes calms down only to explode in a moment with an even greater intensity?

The lasting dispute between the CC and the SC in the long perspective will damage the trust of the citizens in legal certainty and stability of law. It also gives rise to problems of judicature in the courts of lower instances and it lowers the reputation of the judicial system. Furthermore, the dispute is not about who should bear the palm – the Constitutional Court or the Supreme Court – but this is a dispute of fundamental importance for the functioning of a coherent legal system.

Will the vision of Wojciech Szpara come true? The lawyer wrote

I can see it in my imagination – judges passing judgments in the first or second instance, sitting somewhere at night with rings under their eyes and wondering over another coffee which judicature they should rely on: that of the Supreme Court or the Constitutional Court. I can see myself too, strenuously elaborating a topic and drafting a legal opinion and I can see clients to whom I will not be able to explain why I am actually not able to clearly explain some legal issues. It is possible also that lawyers will have problems with the interpretation of conflicting rulings in cases in which the Supreme Court and the Constitutional Court get in each other's way!³⁴

³³ Ibidem, p. 95.

³⁴ W. Szpara, *Sąd Najwyższy kontra Trybunał Konstytucyjny*, [online] <http://adwokat-woj-szpara.firmy.net/aktualnosci.html?n=9P43> [accessed: 15.06.2015].

De lege ferenda – we should return to the demand to settle in the Constitution the relations between the Constitutional Court and the Supreme Court, in particular the scope of exclusive cognition of the Constitutional Court to rule on the constitutionality of laws and also, and perhaps most importantly, binding of the Supreme Court by the findings included in the rulings of the Constitutional Court.³⁵ On the other hand, Jerzy Jaskiernia notes that the dispute between the Constitutional Court and the Supreme Court has the characteristic features of a conflict of competence which the Constitution does not account for, and that is why it should be amended or the relevant laws on the Constitutional Court and the Supreme Court should be amended.³⁶

The words of Ronald Dworkin should also be remembered, as he said that “the courts are the capitals of the law, and the judges are its princes”³⁷ and if so, then *noblesse oblige*.

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³⁵ A. Korobowicz, *Sąd Najwyższy Rzeczypospolitej Polskiej: historia i współczesność: księga jubileuszowa 90-lecia Sądu Najwyższego 1917–2007*, Toruń 2007, p. 342.

³⁶ J. Jaskiernia, *Spór pomiędzy Trybunałem Konstytucyjnym a Sądem Najwyższym w kwestii znaczenia tzw. orzeczeń interpretacyjnych Trybunału Konstytucyjnego*, [in:] *Księga XXV-lecia Trybunału Konstytucyjnego. Ewolucja funkcji i zadań Trybunału Konstytucyjnego – założenia a ich praktyczna realizacja*, red. K. Budziło, Warszawa 2010, p. 256.

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